this would seem to indicate? Probably not, for the briefness of the report and lack of discussion would hardly warrant such an assumption. The best explanation is probably that suggested in the opening sentence of this discussion.

SALES—LIABILITY OF MANUFACTURER OF FOOD TO CONSUMER WHO BUYS FROM A DEALER.—Plaintiff bought from her grocer a loaf of bread made by the defendant baking company, on the wrapper of which was a statement that the bread was pure, healthful and a nutritious food. On eating the bread the plaintiff struck a wire nail. On a count drawn in deceit she recovered a judgment for the alleged injury in the superior court, which judgment was reversed for the failure of the plaintiff to prove knowledge on the part of the defendant. *Newhall v. Ward Baking Co.* (Mass.), 134 N. E. 625.

If the plaintiff here had brought her action on the theory either of implied warranty or tort for negligence, she could no doubt have recovered, for in neither of these actions is the proof of knowledge essential. Numerous cases have held that the manufacturer impliedly warrants his product to be fit for food and that such warranty runs in favor of all who may purchase in the legitimate channels of trade. *Ward v. Morehead City Sea Food Co.*, 171 N. C. 33; *Catani v. Swift*, 251 Pa. 52; *Mazetti v. Armour*, 75 Wash. 622; *Davis v. Van Camp* (Ia. 1920), 176 N. W. 382; *Chysky v. Drake Bros.*, 182 N. Y. S. 459. There is a minority doctrine, however, which holds that there is no implied obligation in favor of anyone not in privity of contract with the manufacturer. *Nelson v. Armour Packing Co.*, 76 Ark. 352; *Roberts v. Anheuser-Busch Brewing Co.*, 211 Mass. 449; *Crigger v. Coca Cola Bottling Works*, 132 Tenn. 545. Those jurisdictions that have difficulty in extending the doctrine of implied warranty this far have given relief to the injured consumer through an action of tort for negligence. In those cases where negligence on the part of the defendant can be shown the courts have said that his acts are so important to the welfare and health of the public that he owes them a duty to use great care in the making of their food, regardless of any contract between them. *Tomlinson v. Armour*, 75 N. J. L. 748; *Roberts v. Anheuser-Busch, supra; Ketterer v. Armour*, 200 Fed. 322; *Wilson v. Ferguson*, 214 Mass. 265; *Crigger v. Coca Cola Bottling Works, supra.* In the cases where no negligence on the part of the manufacturer can be shown the courts have imposed an absolute duty to make pure food; he must know that it is fit or take the consequences if it proves destructive. *Parks v. G. C. Yost Pie Co.* (Kan.), 144 Pac. 202; *Watson v. Augusta Brewing Co.*, 124 Ga. 121; *Jackson Coca Cola B. W. v. Chapman*, 106 Miss. 864. See MICH. L. REV. 436; 5 IOWA L. BUL. 86.

STATUTES—ACT REGULATING SPEED OF AUTOMOBILES IN "THICKLY SETTLED DISTRICTS" HELD VOID FOR UNCERTAINTY.—Defendant was convicted under a statute reading, "It is forbidden to operate or drive a motor vehicle on any public highway where the territory contiguous thereto is closely built up at a greater rate of speed than eighteen miles per hour." In an

action to question the validity of the statute, *held,* the statute is void for uncertainty. *Ex parte Slaughter* (Tex., 1922), 243 S. W. 478.

Article 6, Penal Code of Texas, states: "Whenever it shall appear that a provision of the penal law is so indefinitely framed or of such doubtful construction that it cannot be understood either from the words of the statute or from some other written law of the state, such penal law shall be regarded as wholly inoperative." But this is merely a statutory declaration of what already was the law in practically every state. *Tozer v. U. S.,* 52 Fed. 917; *U. S. v. Capital Traction Co.,* 34 App. D. C. 592; SUTHERLAND STAT. CONST., § 322; BISHOP, § 41. The cases in which courts have been called upon to decide whether or not a statute is void for uncertainty present a definite conflict of authority. Statutes making it an offense to operate an automobile at a rate of speed "greater than reasonable" were held valid in Wisconsin, *Mulkern v. State,* 187 N. W. 190, but void for uncertainty in Georgia. *Strickland v. Whately,* 142 Ga. Rep. 802; *Elsbery v. State,* 12 Ga. App. 86. In Indiana a statute making it an offense to "molest or disturb" meetings was held not void for uncertainty, *State v. Oskins,* 28 Ind. 364, while in the same state a statute attempting to distinguish between "broad-tired" wagons and "narrow-tired" wagons was held void. *Cook v. State,* 26 Ind. App. 278. The federal courts have held the "undue preference" clause of the Interstate Commerce Act void for uncertainty. *Tozer v. U. S.,* 52 Fed. 917. In Georgia a statute making it a misdemeanor to operate an automobile at a rate of speed greater than six miles per hour "upon approaching a crossing of intersecting highways" was held sufficiently certain to be capable of enforcement. *Hayes v. State,* 11 Ga. App. 371. Acts stating that railroads must charge a "reasonable and just fare" have been held void for uncertainty in Kentucky, *Louisville & N. R. R. v. Comm.,* 99 Ky. 132, but valid in Iowa. *Burlington, C. R. & N. Ry. Co. v. Dey,* 82 Ia. 312. There are two tests commonly applied as to the certainty of statutes. That used in the principal case and many others is, if a man could not know in advance with reasonable certainty what the crime consisted of, the status is void. *Griffin v. State,* 86 Tex. Cr. Rep. 498; *Cook v. State, supra.* Another common test is, if, in the opinion of the court, the law delegates the legislative power to the jury, allowing them discretion in each case, and making it possible for different juries to hold differently on the same facts, the law is void. *Tozer v. U. S., supra; Strickland v. Whately, supra; L. & N. R. R. v. Comm., supra.* Both these tests are open to criticism, however, for, as Holmes, J., says in *Nash v. U. S.,* 229 U. S. 373, "* * * the law is full of instances where a man's fate depends on his estimating correctly—that is, as a jury estimates it—some matter of degree." A common example of this can be found in a jury's power to decide the question of criminal negligence. In view of the above pointed out definite conflict of authority, and of the fact that crimes such as in the principal case are necessarily hard to define, it would seem that the principal case is unjustified and that the better test is whether or not the law is as definite as the conditions being dealt with permit, *Com. v. L. & N. R. R.,* 140 Ky. 21, or whether or not the law

is as definite as in the nature of the offense is possible. *State v. Dvoracek,* 140 Ia. 266. See also 19 MICH. L. REV. 648, 218, 337; 18 MICH. L. REV. 810.

TORTS—FAMILY AUTOMOBILE—LIABILITY OF PARENT FOR TORT OF MINOR CHILD IN DRIVING FOR CHILD'S OWN PURPOSE.—The auto of D, driven negligently by his minor son, struck and injured P. In an action for damages against D, the evidence showed that D's son was using the car for his own personal benefit and enjoyment. D did not have knowledge that his son took the car, but it did not appear conclusively that he had been forbidden its use unless D's consent was first obtained. D contended that the facts did not show a liability on his part and made a motion for a directed verdict. *Held,* that the son driving for his own personal enjoyment, and not being the agent of his father so as to render the father liable for his negligence, the motion should have been granted. *McGowan v. Longwood* (Mass., 1922), 136 N. E. 72.

This case follows in the trend of the latest decisions concerning the much disputed question of the father's liability for injuries resulting from the negligent operation of his car by his minor children. See *McFarlane v. Winters,* 47 Utah 598, 155 Pac. 437; *Cohen v. Meador,* 119 Va. 429, 89 S. E. 876; 7 Cal. L. R. 283. All the courts agree that mere ownership or the relationship of the parent will not make him liable. *Erlich v. Heis,* 193 Ala. 669, 69 So. 530; *Woods v. Clements,* 113 Miss. 720, 75 So. 119. There was a time when many courts attached liability to the parent on the doctrine of a dangerous agency, but for the most part that theory is abandoned. *Hartley v. Miller,* 165 Mich. 115, 33 L. R. A. (N. S.) 81; *Birch v. Abercrombie,* 74 Wash. 486, 50 L. R. A. (N. S.) 59. HUDDY ON AUTOMOBILES, Ed. 4, p. 31. Most all the courts agree at the present time that the owner's liability depends on the doctrine of master and servant or *respondeat superior,* except in those states where legislative enactments have done away with the common law doctrines. *Cunningham v. Castle,* 127 App. Div. 580, 111 N. Y. Supp. 1057; *Jones v. Hoge,* 47 Wash. 663, 92 Pac. 433. It is also well settled that a master is not liable for the acts of his servant done outside the scope of the master's business. *Stone v. Hills and others,* 45 Conn. 44; *Halverson v. Blosser,* 101 Kan. 683. But whether a minor son driving his car for his own pleasure can be considered the agent and servant of his father in the father's business, has been a question which has been more or less troublesome for courts in general. A leading family automobile case in Missouri (*Daily v. Maxwell,* 152 Mo. App. 415, 133 S. W. 351) concluded that it was the parent's duty to provide recreation for his children; therefore a minor child driving for his own pleasure was the agent of his father in his father's business. This is the so-called Family Automobile Theory. That this view tends to insure justice, and that it is favored by the weight of authority, was the view taken by the court in *Hutchins v. Haffner,* 63 Col. 365. Another leading automobile case in New Jersey, *Doran v. Thomsen,* 76 N. J. L. 754, 19 L. R. A. (N. S.) 335, took a different view and held that a minor child driving for his own pleasure was not the agent or servant of the father. The latest decisions seem to be in accord